

Local Government Employee-Management Relations Board E-Newsletter

3300 W. Sahara Avenue Suite 260 • Las Vegas • NV • 89102
www.emrb.nv.gov • emrb@business.nv.gov • (702) 486-4504

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Recent Board Decisions

Please note that summaries of recent decisions are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. They also may be found on our website.

Item 825; Case 2017-002; IBEW, Local 1245 v. Truckee Meadows Water Authority. State law provides for an employer to decide whether certain jobs should be included within the boundaries of a given bargaining unit. IBEW, Local 1245 requested that the Truckee Meadows Water Authority (TMWA) include five laboratory positions in a unit consisting primarily of blue collar operations and maintenance employees. TMWA rejected that request, citing a lack of community interest. Instead, TMWA stated that a separate bargaining unit of those five employees be recognized.

Pursuant to state law, IBEW, Local 1245 appealed that decision to the Board. NRS 288.170 provides that the primary criterion for deciding the case is the community of interest of the employees concerned. A community of interest includes the similarities in duties, skills, working conditions, job classifications, employee benefits, as well as the amount of interchange or transfer of employees, integration of an employer's operations and supervision of employees. Other factors to be considered in a community of interest determination include the desires of the affected employees, geographic proximity, common objectives in providing services, personnel policies, and the frequency of contact among the employees. Moreover, the Board generally favors larger wall-to-wall units in order to minimize the practical difficulties on a local government employer that result from a proliferation of bargaining units and to serve as a safeguard for employees against the diluted effectiveness caused by smaller and fragmented bargaining units.

Here, the Board found that most of the factors cut in favor of finding a community of interest with the amount of interchange or transfer of employees cutting against that finding.

The Board also addressed an argument of TMWA, namely that its decision against a community of interest should be accorded the same deference that the agency receives on judicial review. The Board first stated that NRS 233B provides for a standard of review and not a standard of proof and that NRS 233B.135's standard of review does not set forth a standard of proof that administrative agencies apply in their hearings. Moreover, the Board found that that plain language of NRS 288.170 does not contemplate deference to TMWA's initial determination.

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Regulations Public Workshop Set for October 31st

The EMRB has scheduled a required regulations public workshop for Tuesday, October 31st at 9:30 p.m. The meeting will be held in the Tahoe Room on the fourth floor of the Nevada State Business Center in Las Vegas and will be video-conferenced to the Director's Office conference room in Carson City. The agency both mailed and e-mailed the official notice on October 5th. Please contact our office if you would like a copy of the notice and the draft of the proposed regulations.

The impetus for the regulations is the enactment of two bills into law in the recent session of the legislature. AB 113 makes it a prohibited practice for a local government to not accommodate a nursing mother with respect to reasonable time off and a clean, private place. AB 113 further requires that the EMRB adopt an expedited review process, including simplified complaint filing and an expedited review by the Commissioner in lieu of the Board.

SB 460 increases the size of the Board from three to five members and allows the agency to hear cases in panels of three Board members. The proposed regulation specifies how the Board members are to be selected for the panels, who is to be the presiding officer of a given panel, and the process for assigning cases to the panels. The regulations also allow the Commissioner to designate a given case as a case of statewide significance, which would then be heard by the entire Board. Finally, the regulations allow for a possible *en banc* reconsideration of a panel's decision when the panel's decision was a split decision.

In addition to the two driving forces for the regulations, a few other changes are being recommended based upon comments received at the initial public workshop. One specifies the process for the submittal of *amicus* briefs in cases before the agency. Specifically, the proposed regulation would either allow the Board to solicit *amicus* briefs or else a local government or employee organization could request to do so by the filing of a motion.

Annual Open Forum Also Set

The EMRB will conduct an Open Forum to solicit comments from local governments, employee organizations, the attorneys who represent them and other interested persons on ways to improve the agency. This will be the fourth annual opportunity for the agency to hear from its user community on the issues important to them in order that the agency may better respond to the needs of its constituents. The Open Forum will begin upon conclusion of the Regulations Public Workshop (see above article). In addition to any suggestions that the community might have, the agency is also seeking ideas for the budget for the upcoming biennium as well as ideas for celebrating the agency's upcoming 50th anniversary in April 2019 and the one-year period leading up to that date.

Governor Sandoval Appoints Cam Walker to the Board

SB 460, effective July 1st, increased the size of the Board from three to five members. To this end, Governor Sandoval recently appointed Cam Walker as the EMRB's fourth Board member. His first meeting will be this coming November. Mr. Walker recently served two four-year terms on the Boulder City Council. He also has extensive experience serving on other boards including the Las Vegas Convention and Visitors Authority, the Clark County Debt Management Commission and the Southern Nevada Regional Planning Coalition. Mr. Walker holds a Bachelor of Science degree in business from Brigham Young University and a Master's degree in public administration from UNLV. His professional experience includes past employment with the Las Vegas Valley Water District, Clark County and several private sector employers.

Did you know

that our office will be closed on Friday, October 27th for Nevada Day and also on Friday, November 10th in observance of Veterans Day? Any filings e-mailed to us on those days will be stamped as filed on those days even though the office will be closed.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. The Board has now scheduled cases through January 2018.

November 14, 2017 in Las Vegas (Video-Conferenced to Carson City)

No hearings scheduled.

December 12-14, 2017 in Las Vegas

2017-010, Kerns & Las Vegas Police Managers and Supervisors Association v. Las Vegas Metropolitan Police Department

January 9-11, 2018 in Las Vegas

2017-014, Kash Christopher v. City of Mesquite

The following cases are in the queue, waiting for potential hearing dates:

2017-018, Patrick Kelso v. Juvenile Justice Probation Officers Association

2017-021, Varner, Rumbaugh & Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

2017-023, Nicholas & Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

2017-024, IAFF, Local 1607 v. City of North Las Vegas

2017-025, Yu & Las Vegas Police Managers and Supervisors Association v. Las Vegas Metropolitan Police Department

On the Horizon

The next meeting of the Board will be held in Las Vegas on Tuesday, November 14th. The meeting will be video-conferenced to Carson City. There will not be a hearing for this meeting since the attorneys representing clients in cases ready for a hearing already had the dates in November booked for other proceedings. The agenda for the meeting will be issued on Monday, November 6th.

It's Time for Your Required Annual Filings

Every local government and employee organization must annually file a report with the EMRB each November. As was done for the past two years, this year we again will allow the annual reports to be filed via e-mail. Please look for our mail, which should arrive via USPS by the end of October. The forms will be mailed to the official contact person at each local government and employee organization on October 23rd. If you are the official contact person please look for the form in the mail. If you are no longer the official contact person please forward the mail to the person who should now be the official contact person.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.